U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 32979561

Date: AUG. 6, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a business executive in the energy sector, seeks classification as an individual of extraordinary ability. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A).[1] This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner had satisfied at least three of the ten initial evidentiary criteria for this classification as set forth in the regulations. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

## I. LAW

A noncitizen is eligible for the extraordinary ability immigrant classification under section 203(b)(1)(A) of the Act if:

- They have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation.
- They seek to enter the United States to continue working in the area of extraordinary ability; and
- Their entry into the United States will substantially benefit the country.

[1] USCIS records show that the Petitioner is currently in the United States on an approved Form I-129, Petition for Nonimmigrant Worker, (with receipt number [redacted]) in the classification of an alien of extraordinary ability.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022); *Visinscaia v. Beers*, 4 F.Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F.Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

The Petitioner claims that he qualifies as an individual of extraordinary ability in business based on his years of experience as a business executive in the energy sector, which included filling top positions such as vice president and deputy CEO and serving as chairman of the board at various entities within the energy sector. Because the Petitioner has not indicated or established his receipt of a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claims that he meets the six regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(ii)-(iv), (vi), (viii), and (ix). The Director determined that the Petitioner demonstrated that he has performed in a leading or critical role with organizations that have a distinguished reputation and commanded a high salary in relation to others in the field, therefore satisfying the criteria at 8 C.F.R. § 204.5(h)(3)(viii) and (ix). The record supports this determination.

The Director concluded, however, that the Petitioner did not establish that he met any of the remaining criteria that he claimed, namely, the four criteria listed at 8 C.F.R. § 204.5(h)(3(ii)-(iv), and (vi). On appeal, the Petitioner asserts that he meets at least three criteria and is otherwise eligible for the requested classification. He contends that the Director overlooked or disregarded certain evidence and applied requirements that are not indicated by the regulations or U.S. Citizenship and Immigration Services policy. Upon review, we conclude that the Petitioner has met at least one additional criterion.

Namely, the record supports the Petitioner's assertion that the Director did not properly apply the preponderance of the evidence standard when reviewing the criterion at 8 C.F.R. § 204.5(h)(3)(iv), which requires evidence demonstrating a petitioner's participation as a judge of the work of others in the same or an allied field. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Although the Director acknowledged the Petitioner's submission of a reference letter addressing this criterion, she deemed the evidence to be insufficient because the Petitioner "did not submit objective documentary evidence to substantiate the claims of the letter." The Director did not, however, assess the contents of the letter, which was written by [redacted], who was the event's moderator and, along with the Petitioner, helped organize the [redacted] an international energy forum

"dedicated to prospective energy specialists under 35 years of age." Mr. [redacted] described the Petitioner as a "leading energy expert" possessing a comprehensive understanding of "all variety of energy markets" and thus capable of serving as a jury member who judged teams in a competition. Mr. [redacted] elaborated on the forum's competition, stating that it involved participating teams who were tasked with "formulating their visionary analysis of future developments, creating a collective 'foresight' for the energy industry." As a member of the judging panel, the Petitioner's role was to "diligently assess and score the final teams' submissions."

On appeal, the Petitioner points to the previously submitted letter and asserts that the criterion in question has been satisfied. We conclude that the Director did not fully assess the previously submitted evidence and agree with the Petitioner's assertion that he has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(iv).

With eligibility under the additional criterion, the Petitioner satisfied part one of the two-step adjudicative process described in *Kazarian* and has overcome the sole basis for the denial of his petition. Accordingly, we will withdraw the Director's decision. Because the Petitioner has met the initial evidence requirements of at least three criteria, it is unnecessary to discuss any additional eligibility claims relating to the regulatory provisions at 8 C.F.R. § 204.5(h)(3)(i)-(x).

However, granting three initial criteria does not suffice to establish eligibility for the classification the Petitioner seeks or establish that the record supports the approval of the petition. USCIS must now determine whether the record establishes sustained national or international acclaim and recognized achievements sufficient to place the Petitioner among the small percentage at the very top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. The Director did not make any initial final merits determination, and we decline to make that determination in the first instance. We will therefore remand the matter.

On remand, the Director should evaluate the evidence and consider the petition in its entirety to make a final merits determination. In the final merits determination, the Director should weigh the evidence submitted in support of all claimed initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), any other relevant evidence in the record, and the Petitioner's claims and evidence on appeal to determine whether the record establishes sustained national or international acclaim and recognized achievements sufficient to place the Petitioner among the small percentage at the very top of his field.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.